

CALIFORNIA AND WESTERN MEDICINE

OFFICIAL JOURNAL OF THE CALIFORNIA AND NEVADA MEDICAL ASSOCIATIONS

VOL. 43

OCTOBER, 1935

NO. 4

California and Western Medicine

Owned and Published by the

CALIFORNIA MEDICAL ASSOCIATION

Four Fifty Sutter, Room 2004, San Francisco, Phone DOuglas 0062

Address editorial communications to Dr. George H. Kress as per address above; advertising and business communications to Secretary-Treasurer, Dr. Frederick C. Warnshuis, also at above address.

EDITOR GEORGE H. KRESS

Advertisements.—The Journal is published on the seventh of the month. Advertising copy must be received not later than the fifteenth of the month preceding issue. Advertising rates will be sent on request.

BUSINESS MANAGER . FREDERICK C. WARNSHUIS

Advertising Representative for Northern California

L. J. FLYNN, 544 Market Street, San Francisco (DOuglas 0577)

Copyright, 1935, by the California Medical Association

Subscription prices, \$5 (\$6 for foreign countries); single copies, 50 cents.

Volumes begin with the first of January and the first of July. Subscriptions may commence at any time.

Change of Address.—Request for change of address should give both the old and the new address. No change in any address on the mailing list will be made until such change is requested by county secretaries or by the member concerned.

Responsibility for Statements and Conclusions in Original Articles.—Authors are responsible for all statements, conclusions and methods of presenting their subjects. These may or may not be in harmony with the views of the editorial staff. It is aimed to permit authors to have as wide latitude as the general policy of the journal and the demands on its space may permit. The right to reduce or reject any article is always reserved.

Contributions—Exclusive Publication.—Articles are accepted for publication on condition that they are contributed solely to this journal.

Leaflet Regarding Rules of Publication.—CALIFORNIA AND WESTERN MEDICINE has prepared a leaflet explaining its rules regarding publication. This leaflet gives suggestions on the preparation of manuscripts and of illustrations. It is suggested that contributors to this Journal write to its office requesting a copy of this leaflet.

DEPARTMENT INDEX

(Itemized Index of Articles is printed on Front Cover)

	PAGE
Editorials	249
Editorial Comment	254
Original Articles	257
Lure of Medical History	283
Clinical Notes and Case Reports	288
Bedside Medicine	294
California Medical Association	301
C. M. A. Department of Public Relations	308
Woman's Auxiliary to C. M. A.	311
Miscellany	313
Index to Advertisements	ADV. PAGE 8

EDITORIALS†

ASSEMBLY BILL 246—CHAPTER 386: THE NONPROFIT HOSPITAL SERVICE BILL

Text of This Law Was Printed in the August Issue: Should Be Read.—The text of this important California statute, which became operative at midnight of September 14, 1935, was printed in full on page 175 of the August issue. Members of the California Medical Association who have not taken the time to read and reflect upon its nature and scope, particularly in relation to its possible effects upon private medical practice, are again urged to do so. The officers of the Association have given earnest thought to the measure, but the path along which to proceed, in order properly to safeguard the interests of scientific and organized medicine, is no more easy to find for officers than for the members at large. Therefore, at an early meeting of each component county society, the new law should be analyzed and discussed, either by a committee to which it has been submitted for study, or by one or more members who are sufficiently interested to be willing to open a discussion on the new statute's merits and demerits. The officers of the State Association will welcome reports from all component county units; and if such are received, the Council of the Association will be in better position to carry out the members' wishes. Otherwise, county societies must share in the blame, if later events show that mistakes in procedure have been made.

* * *

Recent Council Meeting Was a Two-Day Session.—Because of the importance of this and several other matters which had places on the docket, the last meeting of the California Medical Association Council was a two-, instead of a one-day session. The meeting, the minutes of which are printed on page 302 of this issue, was held on September 7 and 8, in the headquarters building of the Los Angeles County Medical Association; and it will be noted that members of the Council were thus willing to give two days to a consideration of problems related to the interests of the members of the Association. Reciprocally, members of the Association should now be dis-

† Editorials on subjects of scientific and clinical interest, contributed by members of the California Medical Association, are printed in the Editorial Comments column, which follows.

posed to give a far lesser time period to deliberation as to their personal interests involved in this law, and it is hoped, therefore, that they will so devote the time required to at least read Assembly Bill No. 246 and the comments thereon.

We have stated, in previous issues, that some of the text of this new legislative enactment was not as explicit as might be desired. This deficiency came about, in part, because certain amendments proposed by representatives of the Association failed to reach Sacramento, owing to delay in the mails, for what seemed, at the time, to be the last meeting of the reference committee having the bill in charge; and in order not to jeopardize its chances in the last days of the legislative session, and because several county societies wished for the passage of this type of bill, the proposed law was permitted to pass out of the committee to the floor for final vote, lacking certain desirable amendments.

* * *

The Definition of "Hospital Care."—Without going into a detailed discussion of the Act which went into force on September 15, 1935, we shall here refer to and comment upon two excerpts, which indicate some of the problems still to be solved before the new law can be put into satisfactory operation.

The first quotation will be the four-line paragraph on "Hospital care," having the caption, "Section 1a," and reading as follows:

"Sec. 1a. 'Hospital care,' as used in this Act, may include any or all of the following services: maintenance and care in hospital, nursing care, drugs, medicines, physiotherapy, transportation, material appliances and their upkeep."

* * *

The Place of Clinical Laboratory and X-ray Service.—Referring to the paragraph quoted above, it may be stated that "clinical laboratory service" and "x-ray service," each of which, in recent years, has been part and parcel of the institutional activities of many hospitals in California and other states, are not mentioned in Section 1a of Assembly Bill No. 246.

Owing to that fact, and because the California State Board of Health, by the terms of the Act, is required to furnish a statement "certifying that it [the corporation operating a nonprofit hospital service] is complying with the standards required by the State Department of Public Health," the president of that board, Dr. Howard Morrow of San Francisco, thought it desirable to secure an opinion from the Attorney-General of California on certain points.

* * *

The Opinion of the State's Attorney-General Must Be Followed.—Because the Attorney-General's opinion is that which state boards and officials must observe, until contrary opinions are expressed by the courts or the Attorney-General's office, it may be in order to refer to a letter received by President Morrow of the State Board of Health from Deputy Attorney-General Lionel Browne.

A perusal of the opinion which was rendered will indicate at once some of the legal intricacies which arise when this type of legislation, no matter how well-meant or well-written, is placed on the statute books of a commonwealth.

* * *

Deputy Attorney-General Browne's Opinion.—The point of view of Deputy Attorney-General Browne (counsel for the California State Board of Health and the California State Board of Medical Examiners*) is of such importance that we take the liberty of quoting it in full:

STATE OF CALIFORNIA
LEGAL DEPARTMENT

San Francisco,
September 4, 1935.

Department of Public Health,
312 State Building,
San Francisco, California.

Attention: Howard Morrow, M. D.,
President, Board of Public Health.

Gentlemen:

In your communication of August 30, you refer to Chapter 386, Statutes of 1935, being "An Act for the regulation and control of corporations organized for the purpose of operating nonprofit hospital service plans." You point out that Section 1 provides what corporations may provide hospital care, the latter term being defined in Section 1a as follows:

"'Hospital care' as used in this Act may include any or all of the following services: maintenance and care in hospital, nursing care, drugs, medicines, physiotherapy, transportation, material appliances and their upkeep."

You ask whether the Act referred to contravenes the provisions of the Medical Practice Act, pointing out that hospitals have established clinical pathological laboratories for the performance of necessary hospital work for doctors and patients, as well as x-ray departments for x-ray diagnosis and treatment.

In reply permit me to state that in my opinion this Act does not contravene the provisions of the Medical Practice Act. While Section 1a provides for "care in hospital . . . physiotherapy . . . , material appliances and their upkeep," this language is to be construed in harmony with the provisions of the Medical Practice Act rather than as a possible amendment to it. So interpreted, Chapter 386 will not permit a corporation to contract to furnish medical attention or, in fact, do so. It will likewise not permit the supplying of physiotherapy, material appliances, or the upkeep of the latter, if the supplying thereof requires the doing of an act which would contravene the provisions of Section 17 of the State Medical Practice Act. The latter section prohibits one not licensed as a physician and surgeon from advertising or holding "himself out as practicing, any system or mode of treating the sick or afflicted in this State." It likewise prevents an unlicensed person from diagnosing, treating, operating for, or prescribing for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other mental or physical condition of any person.

As to your statement that hospitals have established clinical pathological laboratories for the performance of necessary hospital work for doctors and patients, as well as x-ray departments for x-ray diagnosis and treatment, I would state that while hospitals have the right to conduct certain technical work in clinical pathological laboratories, and to pay pathologists therefor, the pathologist must do purely technical work and cannot practice medicine unless licensed so to do. For example, an unlicensed person might make a technical examination to determine whether a specific germ or germs might be found in a given sample,

* See also page 119 of the August issue for the article by Deputy Attorney-General Browne, on "Regulation of the Professions by the State."

but would not be permitted to diagnose a patient's condition. Such diagnosis would have to be by a licensed person.

As to your statement that x-ray departments are established in hospitals for x-ray diagnosis and treatment, such hospitals paying unlicensed radiologists a salary, salary and commission or by commission alone, I would state that if the taking of an x-ray constitutes the practice of medicine, such unlicensed radiologists are violating the provisions of the State Medical Practice Act. Whether the taking of an x-ray constitutes the practice of medicine is a mooted question, at present under consideration by the Superior Court of the City and County of San Francisco. In such case it has been contended that the taking of an x-ray is an integral part of the practice of medicine, that it is a dangerous instrumentality and should not be permitted by other than a trained medical man. Whether this contention will be sustained is a question that cannot at this time be determined. However, I would state that there is no doubt but that the use of the x-ray in alleviating a mental or physical condition does constitute the practice of medicine, and that no hospital has the right to collect money for x-ray treatments and to compensate either a licensed or an unlicensed radiologist by way of salary, salary and commission, or commission alone. The only persons who may treat by x-ray and make a charge for so doing are those licensed to practice medicine and surgery, and it would seem that if such licensed persons permitted unlicensed persons to share compensation charged for such treatment they would be aiding and abetting an unlicensed practitioner, contrary to the provisions of the State Medical Practice Act.

In conclusion, I would state that, according to the view of this office, corporations may contract to furnish pathological services only where such pathological services do not constitute the practice of medicine. It is likewise my view, pending the decision in the case of *in re application of McGranaghan*, the matter [in the San Francisco Superior Court] above referred to, that corporations can contract to furnish non-medical services of radiologists, whether such radiologists be licensed or unlicensed, but that unlicensed persons cannot treat a mental or physical condition of a human being.

I am prepared to say that both pathology and radiology may be divided into technical and professional fields.

Very truly yours,

U. S. WEBB, *Attorney-General*.
By (Signed) LIONEL BROWNE, *Deputy*.

* * *

Based on the Attorney-General's Opinion, What Shall Be the Course of Action?—It is to be remembered, whether one agrees with or does not agree with Deputy Attorney-General Browne, that his opinion, as stated above, must be followed until overruled by higher legal authority; and members of the profession should keep this fact in mind, because what concerns physicians in all this, are not academic opinions of a disputant nature, but that course of action which, according to the constituted law of the land, must be followed.

* * *

Certification by the State Board of Health.—Having considered the above at some length, let us now briefly take up some of the problems which have been thrust upon the State Board of Health, in so far as the certification of corporations organized for nonprofit hospital service is concerned. The language of Assembly Bill No. 246, Chapter 386, includes in its Section 1 the following:

" . . . ; and provided further that no corporation authorized by the provisions of this Act to establish, maintain and operate a nonprofit hospital service plan may itself furnish hospital care to its subscribers or do any of the acts herein authorized, unless and until it shall have first procured a certificate from the State Department of Public Health certifying that it is complying with the standards required by said State Department of Public Health; nor shall any such corporation enter into any contract with any hospital for the furnishing of hospital care to its subscribers unless the hospital with which it contracts has procured such a certificate from the State Department of Public Health."

* * *

What Shall Be the Standards Set for a Corporation Operating a Nonprofit Hospital Service?—Certainly the above is somewhat of a large contract to add to the many other legal responsibilities of the State Board of Health. However, Chapter 386 of the statutes is now the established law, and of necessity, the members of the Board must ask themselves what requirements or standards shall be demanded, before a corporation receives the State Health Board's sanction to operate a nonprofit hospital? Among such questions upon which the board may be called to give some decision, the following may be enumerated:

(a) That each corporation applicant shall establish, to the satisfaction of the Board, that it is not wholly or partly supported by taxation except where the applicant is the only hospital in the county where it is located, or is a hospital maintained and operated by or in connection with a state college or university of the State of California in conjunction with and as a part of its educational and administrative program.

(b) That any such hospital wholly or partly supported by taxation (and the only hospital in the county where it is located) shall be operated for residents of such county only; any such hospital maintained and operated by or in connection with a state college or university of the State of California shall be maintained and operated only so far as necessary for its educational and administrative program.

(c) That each applicant corporation shall establish, to the satisfaction of the Board, that the services which it proposes to furnish shall include only maintenance and care in hospital, nursing care, drugs, medicines, physiotherapy, transportation, material appliances and their upkeep, and shall not include pathological, roentgenological, anesthetic, or any other professional services of any physician.

(d) That each applicant corporation shall establish, to the satisfaction of the State Board of Health, that it or any of its agents or representatives is not organized, maintained, or operated for the purpose, directly or indirectly of acting as a capper or steerer or of obtaining patients for any physician or physicians.

(e) That the articles of incorporation and by-laws of each applicant corporation shall provide that any excess of income over reserves shall be devoted to the betterment of the service furnished subscribers, and that under no circumstances or conditions shall the applicant or any shareholder, member officer, director, or owner of any interest in the applicant be entitled to receive any part or portion thereof other than a reasonable compensation for services actually rendered in the operation and maintenance of applicant.

(f) That the articles of incorporation, by-laws, or other contractual papers or document of applicant corporation shall provide that in the event that applicant ceases business, any surplus remaining shall be distributable and devoted to the subscribers and contract holders.

(g) That all contracts for hospital care shall include at least the following: ward bed, board, general nursing service, operating-room service, medical and surgical dressings, and drugs other than compounded prescriptions and proprietary drugs. No conditions or excep-

tions shall be contained in such contracts other than for insanity and chronic tuberculosis. All such contracts shall provide at least twenty-one days of twenty-four hours each of hospital service per annum. The proposed hospital contract shall in all other respects be fair, just, and equitable to the purchasers thereof, and such as will not work a fraud or injustice upon any intended subscriber, member, beneficiary, or other person.

(h) That the applicant corporation must establish, to the satisfaction of the State Board of Health, that it is able to adequately provide the hospital care which it proposes to offer to purchasers thereof.

(i) That the applicant corporation shall specify the rates, dues, fees, or other charges to be imposed upon subscribers, members, beneficiaries, and other purchasers thereof.

(j) That the contracts, membership certificates or other documents evidencing the right of the purchaser to hospital care, shall be submitted to, and approved by the State Board of Health, and no other documents shall be used. Such documents must show on their face the times at which the benefits take effect and terminate, whether the contract purports to benefit more than one person thereunder, and must include a plain and complete statement of the membership charges, dues or contributions or payments which shall be in such amount as shall be reasonably required to maintain and provide the service offered without profit.

(k) That the contract and any endorsement or attached papers must be plainly printed or typed, of which the type shall not be smaller than 10 point. The exclusions and exceptions must be printed with greater prominence than the benefits to which they apply. If any portion of the contract purports by reason of the circumstances under which an illness, injury or disablement is incurred to reduce any services to less than that provided for the same illness, injury, or disablement incurred under ordinary circumstances, such portion must be printed in bold-face type and with greater prominence than any other portion of the contract.

(l) That if the contract contains any provisions purporting to make any portion of the charter, constitution or by-laws of the corporation a part of the contract, such portion must be set forth in full in the contract.

(m) That each such contract must contain the following in prominent black-face type not less than 10 point: "Nothing in this contract contained shall in any way or manner restrict or interfere with the right of the subscriber (member or beneficiary) to make a free choice of his attending physician, who shall be the holder of a valid and unrevoked physicians and surgeon's certificate, and who shall have the right to attend the subscriber (member or beneficiary) professionally in any hospital furnishing hospital service provided by this contract (certificate)."

(n) That each applicant corporation shall agree to and with the State Department of Public Health that every subscriber, beneficiary or contract holder shall have the right to be attended in its hospital or any hospital with which it contracts, by the physician who is the holder of a valid and unrevoked physician's and surgeon's certificate while receiving the care provided for in such contract (certificate).

(o) That each such applicant corporation shall specify what portion of the consideration received by it from its intended subscribers, members or contract holders, is to be expended for purposes other than the furnishing of hospital care, and no applicant shall be licensed hereunder by the State Department of Public Health which expends more than — per cent of the — periodic payments therefor.

(p) That every applicant corporation shall specify the portion of the dues, fees or contract payments to be received from its members, subscribers or contract holders to be devoted for the solicitation of members, subscribers or contract holders, and not more than — per cent of the first — months' payments therefor shall be expended for such purpose. Every applicant shall specify the portion of the dues, fees

or contract payments to be received from its members, subscribers or contract holders to be devoted to administration of applicant, and not more than — per cent thereof shall be expended for such purpose.

(q) That the applicant shall submit to the State Department of Public Health all promotional and advertising matter which it proposes to issue, whether verbally or in writing, and no representations, advertisements, or promotional matter of any kind shall be issued by the applicant except that submitted to and approved by the State Board of Public Health. (As Corporation Commissioner rules in matters of this nature.)

(r) That the applicant corporation shall specify and expressly agree to and with the State Department of Public Health that no physician and surgeon shall attend the members, subscribers or contract holders through more than one bona fide assistant; all other attendance shall be by the physician selected by the subscriber, member or contract holder personally.

(s) That every applicant corporation shall state the names of its directors, officers, managers, and operating executives, their addresses, their qualifications and experience, to render the hospital care proposed to be furnished, and shall fully describe the hospital facilities; and if the hospital care is to be furnished by hospitals under contract, the names, addresses, locations and full descriptions of such hospitals, with full and complete copy of all contractual documents entered into or proposed to be entered into between applicant and any such hospital or hospitals.

(t) That every certificate issued by the State Department of Public Health shall be issued for a period not exceeding one year, and every recipient thereof shall be required to renew its application annually for extension thereof.

* * *

Component County Societies and Members Are Invited to Make Further Suggestions.—

At this point we are tempted to wonder how many members have taken the time to read all the foregoing? It is to be hoped that many have done so; but for those who have not even scanned the above, it may be stated that all these and other questions of policy must necessarily be taken up for consideration by both the Health and Insurance Departments of the State of California, and that in equal, though unofficial measure, they are of interest and importance to the officers and members of the California Medical Association. Therefore, an invitation is extended to component county societies and to individual members of the medical profession to feel free to send any further suggestions to the Association secretary, whose office will note their contents and then transmit them to the State Board of Health.

Let it be remembered, at the present time, that the proposition which faces the citizens of California and its medical profession is not whether Assembly Bill No. 246—Chapter 386 is a good or poor law, or desirable or undesirable, but how this new statute can so be administered that it will work in fullest measure both to the mutual best interests of the people of California, and of scientific and organized medicine.

PSITTACOSIS IN CALIFORNIA

Birds of the Psittacine (Parrot) Family Responsible for a New Disease.—Whether some choose to believe it or not, the fact remains that there is a disease known as psittacosis, found in